STRAITS SETTLEMENTS REPORTS.

PUBLISHED BY AUTHORITY.

[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C.J.

February 14, 1938.

GOH AH SAN & 2 ORS.

vs.

THE KING.

[SINGAPORE MAGISTRATE'S APPEALS Nos. 103, 104 & 105 of 1937]

Criminal procedure—appeal—question of fact—verdict against weight of evidence—Appellate Court's power to interfere with conviction—appeal dismissed—Judge not functus officio before certificate of result prepared—judicial discretion to allow appeal—Magistrate's power to view locus in quo—Criminal Procedure Code, S.208.

Although an appeal is dismissed, the Appellate Judge is not *functus officio* until after the certificate of the result of the appeal has been prepared and issued. He may, before the certificate is prepared, allow the appeal, if, upon mature consideration, he thinks fit to do so.

Jones v. *Williams*, 41 J.P. 614, applied.

Although an Appellate Court is reluctant to reverse a Magistrate's decision based on a finding of fact, it should set aside the orders of the Lower Court if it is of opinion that such decision is against the weight of evidence.

Where at the close of a case, counsel for two accused asked the trial Magistrate to convict or acquit a third accused, who had not given evidence, so as to enable them to call him as a witness for their clients, but the Magistrate did not adopt this course, although no objection thereto was raised by the prosecution officer.

Held, that the trial Judge, having given his reasons for not doing so, exercised his discretion rightly in not complying with counsels' request.

Section 208 of the Criminal Procedure Code which provides for a view of the *locus in quo* by a jury applies to trials before a Magistrate.

MAGISTRATE'S APPEALS.

Appellant No. 1 was unrepresented.

Braga for Appellant No. 2.

Roland Braddell, (*O'Connor* with him) for Appellant No. 3.

Howe, Crown Counsel, for the Crown.

These appeals were heard before McElwaine, C.J. on 9th of February, 1938. At the close of the arguments, the learned Chief Justice dismissed the appeal of Appellant No. 1 but allowed those of Appellants Nos. 2 and 3. His Lordship intimated that he would give his reasons later.

Cur. Ad. Vult.

McELWAINE, C.J.—The three appellants were convicted in the District Court, Singapore, on the 10th December 1937 on a charge of having been concerned in the importation of chandu on 21st September 1937 contrary to Section 12 (1) (B) of the Chandu Revenue Ordinance (Chapter 223) and were sentenced to very substantial fines and also to substantial terms of imprisonment.

At the close of the arguments on these appeals I dismissed the appeal of Goh Ah San (hereinafter referred to as No. 1 accused) and I allowed the appeals of Jee Teck Chek and Foo Hong Dat (hereinafter referred to as Nos. 2 and 3 accused respectively), and said I would give my reasons later.

No. 3 accused was compradore of the motor vessel Mui Nam, No. 2 accused was a steward who looked after second class cabins and also waited on No. 3 accused in the Mui Nam. No. 1 accused had apparently come out to the ship anchored in the Roads in Singapore harbour.

In the course of their duties certain Revenue Officers Nos. 53, 231 and 44 boarded the Mui Nam at about 6 a.m. on 21st September 1937 and the Crown story in short was that No. 3 accused invited Revenue Officers Nos. 53 and 231 to his cabin and arranged with them that he should be allowed to land chandu in consideration of the payment to the two Revenue Officers of a bribe of $200; that No. 1 accused was the man to take delivery of the chandu and that No. 2 was seen handing a suit case and brown paper parcel containing chandu to No. 1 accused.

Revenue Officer No. 53 was shewn to be a very unreliable witness. He swore that he saw No. 1 accused come to the Mui Nam in a sampan and that he was the sole passenger and that he saw No. 1 accused come on board, go up the gangway and go direct to the cabin of No. 3 accused into which the Revenue Officer followed when No. 3 told him that No. 1 accused was the man who was to take the chandu. This Revenue Officer gave evidence as to where he was in the Mui Nam when he saw No. 1 accused come on board. The learned District Judge visited the Mui Nam and pointed out that from where Revenue Officer No. 53 was standing it was impossible for him to see what he said he had seen, namely, No. 1 accused approach in a sampan and go up the gangway. Recalled later, this Revenue Officer admitted that he did not see No. 1 accused come on board. The District Judge in his grounds for Judgment thought that Revenue Officer No. 53 in saying he saw No. 1 accused come on board was only quoting as what he saw something seen only by Revenue Officer No. 231, and that Revenue Officer No. 231 "who was on duty on the top of the gangway said from the first that he saw No. 1 accused come on board." Revenue Officer No. 231 said nothing of the kind. What he did say was "I did *not* notice No. 1 accused come on board." It

was important from the Crown's point of view to shew that No. 1 accused came from the shore and was not a passenger, and although there was other evidence which, if believed, would shew that No. 1 accused had come from the shore, that evidence was the uncorroborated evidence of this same Revenue Officer that he saw No. 1 accused enter No. 3 accused's cabin and that he followed and was told by No. 3 accused that No. 1 accused was the person who was to take delivery. The manifestly false make-weight in this officer's evidence throws doubt on his reliability as a witness. His different accounts on 28th October and 23rd November as to how the suit case got into the sea add to these doubts. I refer to these accounts later.

There were some minor discrepancies in his evidence as when he said in one part of his evidence that No. 2 accused was wearing a coat and in another part that he was wearing a sleeveless singlet, and that he (the Revenue Officer) sat down while waiting for the chandu to be handed to No. 1 accused, and again that it was No. 1 accused who sat while the Revenue Officer stood. These minor discrepancies standing by themselves would carry little or no weight but their cumulative effect when taken with the statements about seeing No. 1 accused come on board, and his inconsistent accounts about the suit case seriously impair the evidence of this Revenue Officer.

This Revenue Officer said that about 7.30 a.m. he saw No. 3 accused walking to his cabin followed by Revenue Officer No. 231 and that about five minutes later No. 3 accused came out of the cabin and beckoned to him (Revenue Officer No. 53) and he (Revenue Officer No. 53) then entered the cabin. So far this evidence was corroborated by Revenue Officer No. 231.

Then a remarkable conversation in the Malay language is alleged to have taken place. Accused No. 3, according to the two Revenue Officers, said he had got chandu and offered $200 to be allowed to land it. Revenue Officer No. 53 who is a Malay said that No. 3 accused spoke in Malay fluently, while Revenue Officer No. 231 who is a Chinese was more critical and said "he appeared to speak Malay not very smoothly but was intelligible."

The District Judge remarked in disposing of three witnesses who had deposed to No. 3 accused's ignorance of Malay "If No. 3 accused speaks English much better than he speaks Malay I am not surprised that these three men never heard him speak the latter." Revenue Officer No. 231 said he speaks English fairly well, that he passed the fifth standard and can carry on a conversation in English. Revenue Officer No. 53 can talk a little English. The conversation with these two Revenue Officers could have been in English. Both these Revenue Officers said they were invited by accused No. 3 to his cabin.

This interview is admitted by accused No. 3 who gives quite a different version. He denies that he invited the Revenue Officers to his cabin but said that these two Revenue Officers came uninvited and that No. 53 said that he had received information that there was plenty of chandu on board. Revenue Officer No. 53 swore that he had received such information half an hour before he saw accused No. 3. This accused then went on to say that Revenue Officer No. 53 pressed him again and again to give information about the chandu and that at last he, (accused) said jokingly that he had got plenty of chandu—3,000 tahils—and that Revenue Officer then asked "how much will you give me" and that accused replied "$100 or $200." Accused said the conversation was in English because he could not speak Malay. Now it is clear from the Crown story that Revenue Officer No. 53 was the chief spokesman. Whether he was senior to Revenue Officer No. 44 who was brought on board and then drops entirely out of the picture is not apparent, but he does appear to have been senior to Revenue Officer No. 231 because he gave directions to Revenue Officer 231. According to their story nothing was said by accused No. 3 to Revenue Officer No. 231 until after Revenue Officer 53 had entered the cabin. Why was No. 44 not called into the cabin? Why is the more inportant No. 53 not called in first? Why should accused No. 3 take care that there should be two witnesses to this very damning conversation which they attribute to him? Why not square Revenue Officer No. 53 and leave it to him to fix matters up with the others, or why not square all three?

After the arrest of No. 1 accused, Revenue Officer No. 53 handed an exhibit to Mr. Parker at Clifford Pier and he "narrated the events." We do not know what he told Mr. Parker but we do know that later in the day accused No. 3 with the captain of the Mui Nam were interviewed by Mr. Gilmour at the Excise Headquarters in the presence of Mr. Parker and that there No. 3 accused told the same story that he told in the witness box. Mr. Parker, who appears to have conducted the prosecution in a very fair manner, agrees that the two stories were the same. At the end of the interview Mr. Gilmour said "Do not joke next time but go back to the steamer." At this time Mr. Parker had not yet taken statements from the Revenue Officers, which must mean formal written statements, but it would be extraordinary if when Revenue Officer No. 53 "narrated the events" to Mr. Parker at Clifford Pier he told the story which he subsequently told, that Mr. Parker should have failed who had a very different story to tell. It is also noteworthy to tell Mr. Gilmour that he had better hear the Revenue Officer that No. 3 accused having been allowed to go should

have returned with the ship to Singapore on 7th October if he had a guilty conscience.

Accused No. 3 swore that he could not talk Malay and he called several witnesses to prove this. It is not always easy to prove a negative, but the evidence of people who were with accused on occasions when he might have spoken Malay but did not, and who swear that he had to ask the meaning of "ampat puloh sen" is entitled to some small weight especially when the only evidence that he could speak Malay was that of the two Revenue Officers whose version of the conversation whether in Malay or in English was so acutely in issue, and taking into consideration the fact that accused was serving on a ship with no Malay crew for about fifteen months and during that time was only in Singapore for a couple of days at a time between voyages of fifteen or sixteen days duration. I agree with the District Judge that the wife and sister were probably biassed witnesses, but what a biassed witness says may be true.

Then there was the alleged second interview which Revenue Officer No. 53 alone says took place and which accused absolutely denies.

Having falsely sworn that he saw No. 1 accused come on board, Revenue Officer No. 53 swears that he saw him go to No. 3 accused's cabin and that he (the Revenue Officer) entered the cabin and was told by No. 3 accused that this was the man who was to take the chandu. Why did the Revenue Officer not then ask for his $200? He appears never to have asked for it. In his evidence in chief this Revenue Officer No. 53 said he had asked to see the chandu but was told he must wait till the man who was to take it away came on board. Why did he want to see the chandu rather than his $200? Revenue Officer No. 231 said that Revenue Officer No. 53 had consented to allow a small quantity to pass but Revenue Officer No. 53 says nothing about allowing a small quantity to pass. If Revenue Officer No. 231 is telling the truth it is extraordinary that there was no understanding as to what amount was to be allowed to slip through.

At this alleged second interview Revenue Officer No. 53 said "I again asked No. 3 accused where the stuff was to be lowered and he repeated 'through the hole from hatch No. 3.'" He had already been told this on the first interview if the Crown evidence was true, but he makes no arrangements for the payment of the $200. What powerful evidence it would have been had Revenue Officer No. 53 been able to hand over $200 with the chandu to Mr. Parker on Clifford Pier. And what was the chance of getting the $200 after the chandu had been let through?

Another point which struck me as most suspicious is Revenue Officer No. 53 going with accused No. 1 to hold No. 3 and standing or sitting six feet from him. Surely this would have aroused the suspicions of Nos. 1 and 2 accused? The squared officer would be expected to be elsewhere. According to Revenue Officer No. 53's evidence No. 1 accused knew that Revenue Officer 53 knew that No. 1 accused was to take the chandu. What on earth was the Revenue Officer doing at the spot where the crime was to be committed? Why was not this squared officer conveniently out of the way?

On another very important point Revenue Officer No. 53 is the only witness, and that is in connecting accused No. 2 with the offence. He says he seized Nos. 1 and 2 *fragante delicto* but they escaped. He blew his whistle and Revenue Officers No. 231 and 44 came up. "I told him that the chandu we had promised to pass had been produced" and that a Chinese had jumped into the sea. He then goes with Revenue Officer No. 231 in a motor sampan in pursuit. He gave no description to Revenue Officer No. 44 of No. 2 accused. Later the Revenue Officer No. 53 came back on board and had the cabin boys paraded and picked out No. 2 accused as the man who had handed the chandu to No. 1 accused. Other people were present when this handing over of the chandu is said to have taken place but no attempt was made to get any of them to help when No. 2 accused escaped or to identify him either then or afterwards. Revenue Officer No. 53's reasons for not getting any one to identify No. 2 accused were "I was afraid to bring any one lest they should identify the wrong men, not lest they should say that I had got the wrong man." But if independent eyewitnesses identified X as the person who handed No. 1 accused the parcels it would follow that their identification would tend to shew that Revenue Officer No. 53 had got the wrong man whether the witnesses said so in so many words or not.

I have already given my reasons for totally rejecting Revenue Officer No. 53's evidence against No. 3 accused and he has been shewn to be so unreliable, if not deliberately untruthful, that it would be unsafe to accept his uncorroborated evidence against No. 2 accused.

At the close of the argument I considered it was so clear that the appeals of Nos. 2 and 3 accused must be allowed that I quashed their convictions without waiting to give my reasons as they were in custody and not on bail. At the same time I considered that there was some independent evidence against No. 1 accused. In answer to the charge he said that he was asked to carry some stuff from the ship to a sampan and did so not knowing it was chandu. Then there was the evidence not merely of Revenue Officer No. 53 and Revenue Officer No. 231 of the pursuit of No. 1 accused, but also that of Gaffoor bin Kamis who joined in the pursuit in the Master

Attendant's Launch "Plover" and of Muhammad bin Jaffar who arrested No. 1 accused immediately he got ashore. There is no doubt whatever that No. 1 accused is the man who handled this chandu. I regarded his escape and jumping over board as some evidence from which guilty knowledge could be inferred.

This accused did not ask a single question in cross-examination, he neither gave evidence nor made a statement to the Court other than his plea already recorded and his remark when his counsel Mr. Pillay retired from the case in view of accused's plea—that he came to know after his arrest that it was chandu so he must be guilty. He called no witnesses.

Now the accused's plea was not a plea of guilty and the learned District Judge rightly refused to accept it as such.

The plea disposed of the question of the identity of No. 1 accused but to prove its case it was incumbent upon the Crown to prove guilty knowledge in No. 1 accused at the time he took the chandu into his hands and it is to be regretted that Mr. Pillay could not see his way to remain in Court to assist his client on the vital question of guilty knowledge.

At the close of the argument when I allowed the appeals of Nos. 2 and 3 accused I intimated that I would dismiss the appeal of No. 1 accused because his conduct in escaping and jumping overboard was some evidence of guilt. *Rex* v. *Ellis*, (1910) 2 K.B. at 755; 5 Cr. App. R. at 54; Evidence Ordinance (Chapter 13) Section 8.

Now the District Judge in finding accused No. 1 guilty had before him the evidence of escape but he also took two other circumstances into consideration, the evidence of Revenue Officer No. 53 as to the second interview in No. 3 accused's cabin which I consider too unreliable to accept, and another about how the suit case of chandu got into the sea. The District Judge says "But it is certain that No. 1 accused threw the chandu in (exhibit) C overboard and jumped after it." I do not think that this accurately represents the effect of the evidence. It is true that at page 21 of his evidence the Revenue Officer says that "C" fell to the floor " I tried to pick up bag 'C' but he picked it up and took two steps to hole and threw it into the sea." There was then this witness was recalled on 23rd of November. I turn to his evidence on 28th October "No. 1 put 'C' through the hole and I saw a sampan outside in which the boatman was standing with arms outstretched and hands cupped as though to receive it. I ran up and seized No. 1. No. 1 gave his right hand a jerk and shook off my right hand. 'C' fell from No. 1 accused's right hand and I saw it hit the sea." This is a further gross discrepancy in this witness's evidence. If the evidence given by Revenue Officer No. 53 on 28th October was true, the suit case (exhibit C) was in process of being handed to the sampan when the struggle between the Revenue Officer and accused No. 1 caused "C" to fall from his hand; there was nothing in this to suggest that No. 1 accused was trying to hide the evidence by sinking it in the sea. But nearly a month later he improves his story. The bag this time does not fall from his hand into the sea. It falls on the floor and while Revenue Officer 53 tries to pick it up No. 1 accused picks it up and takes two steps to the hole (through which, according to the earlier version, he had already put the bag) and threw it into the sea.

The first story is less likely to be untrue than the second and I find that the finding that accused No. 1 threw away the exhibit is unwarranted.

Nor is the finding that No. 1 jumped after the bag warranted if this is intended to imply that there was no substantial interval of time between the two events. After the bag had fallen into the sea No. 1 accused quieted down and was brought up by one of the two companies to the upper deck where he got free and ran down to the aforesaid hole through which he jumped.

The sum total of the evidence that should be considered against No. 1 accused is that he was handed the parcels and tried to hand them down to the sampan and that after he was seized he escaped.

There was therefore only the barest scintilla of evidence of guilty knowledge against this undefended person and it is to be regretted that when accused told the District Judge that "he came to know, after his arrest, that it was chandu so he must be guilty" that the Judge did not record that he explained to him that if his statement was true he was not guilty. But on careful consideration it appears to me that in this case more than one inference can be drawn from the bare act of escape. That act is consistent with:

(a) Knowledge that he was committing an offence against the Chandu Revenue Ordinance

(b) Realisation that the bag must contain chandu from the fact that a Revenue Officer arrested him

(c) A belief that he was suspected of theft.

Now (b) is consistent with a lack of knowledge that he was doing anything wrong. This man said in the lower Court that "he came to know after his arrest that it was chandu so he must be guilty." Such a state of mind is quite sufficient to explain the escape, and it would not be safe to infer from the act of escape, without any other evidence, that immediately prior to his seizure by the Revenue Officer he knew he was handling chandu.

I have come to the conclusion that the principal witness against this man was so untrustworthy that his evidence should be wholly rejected when it is not admitted or corroborated and that the evidence which remains is not sufficient to support his conviction.

This No. 1 accused was not represented on the appeal before me, and when I dismissed his appeal, and though I had read the record, I did not appreciate the weakness of the case against him. I have had some doubts whether I am now *functus officio*, but no certificate of the result of the appeal has yet been prepared. I stated that I would give my reasons for my decision, and now, having come to a conclusion favourable to an accused person I think I am justified in applying the principle in *Jones* v. *Williams* 41 J.P., 614 (referred to in *Rex* v. *Manchester Justices—Ex parte Leaver*, 53 T.L.R. 687) and in regarding myself as not *functus officio*. I therefore allow the appeal of No. 1 accused.

The three appeals are allowed and the three convictions and sentences are set aside.

An appellate Court is reluctant to reverse a Magistrate's decision on a finding of fact but if on considering the evidence the appellate Court is of opinion that the Magistrate's decision is against the weight of evidence it should set aside the order of the lower Court.

The presumption is that a conviction is good, *Rex* v. *Mohamed Ghouse*, 11 S.S.L.R. 31, but a scrutiny of the record may result in that presumption being rebutted.

I was referred by Mr. Bragga to the Judgment of Terrell J. in *Chia Han Kiat* v. *Rex* 6 M.L.J., 261. It is unnecessary in this case to express an opinion as to whether the passage in the Judgment reproduced in the last paragraph of the head note is expressed in too wide terms, but I respectfully agree with Terrell J. that this Court should set aside a finding of fact when it considers that the finding is against the weight of evidence.

Two points discussed in this case may briefly be noticed. At the close of the case counsel for Nos. 2 and 3 accused asked the District Judge either to convict or acquit No. 1 accused (who had not given evidence) so as to enable them to call him as a witness for their clients. Mr. Parker, the prosecuting officer, did not object.

The learned Dictrict Judge did not adopt this course. This is a matter of judicial discretion and there may well be cases in which it is undesirable if not impossible to adopt such a course. The District Judge gave his reason for refusing to comply with counsels' request:

"I could not pass sentences till he had been questioned and I do not think the result of his answers, if any, ought to affect the sentences."

I thoroughly agree with the last portion of this reason, but I am not sure that I understood the first part. If the District Judge was not prepared then and there, without giving further consideration to the whole case, to decide what his verdict should be or what punishment he should impose, I cannot say that he exercised his discretion wrongly.

A person in the position of No. 1 accused could not properly be called as a witness for the defence until he had been either acquitted or convicted and sentenced. Section 39 of Cap. 223 contains special provisions for calling a co-accused as a Crown witness.

The second point was the propriety of the inspection by the District Judge of the ship. Section 208 of the Criminal Procedure Code (chapter 21) provides for a view of the *locus in quo* by a jury but there can be no doubt that a Magistrate has power to view also. I am inclined to think that the power, in the case of a Magistrate, is inherent. In any case Section 444 of the Criminal Procedure Code enacts that whenever it is made to appear to the High Court that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiring into, or trial of the same; the High Court may order that the offence shall be inquired into or tried by any Court not empowered by section 131 to 135 (dealing with local limits of jurisdiction) but in other respects competent to inquire into or try such offence. This section is not confined to trial by Jury.

The result of the visit by the District Judge to the "Mui Nam" was not unfavourable to the accused; and although criticisms of the procedure adopted on this visit were raised in one of the petitions of appeal these criticisms were not pressed. A view should be conducted in the presence of the accused and his counsel, if he has one. The Magistrate can ask any witness in the presence of the accused and his advocate (if any) to point out any place referred to in his evidence or at which any event deposed to by him took place. If the accused has given evidence or made a statement he may be asked to point out places mentioned or involved in his evidence or statement.

On return to Court any witness (including an accused who has given evidence) should, if the prosecution or the defence so require, be recalled to be examined or cross-examined in respect to any place mentioned in his evidence or indicated by him at the view.

Nothing which has any bearing on the case should be said to the Magistrate save in the presence of the prosecutor, the accused and his counsel (if any).

If anything is said which goes beyond what is reasonably necessary in indicating a place referred to or implied in the evidence and which might be regarded by the Magistrate as evidence, the person (unless he is an accused who has not

given evidence) should be called or recalled for examination or cross-examination on the point on return to Court.

The less said on a view the better, but I do not wish to lay it down that comment by an advocate in the presence of the opposite party or his counsel would vitiate the proceedings.

The whole purpose of a view is to enable the Magistrate to follow the evidence given in Court and to help him to arrive at the truth.

But I do not think it safe to lay down any rigid rule for the conduct of a view. Something must be left to the Magistrate's discretion and so long as everything said or done is said or done openly in the presence of the accused and his counsel and is interpreted to the accused, if necessary, and so long as any new matter or new aspect arising during the view is tested by examination or cross-examination on return to Court there would be no irregularity in the trial nor would there be any ground for suspecting that justice did not appear to be done.

I would add that if counsel having been informed of the time and place of the view does not attend his non-attendance would no more vitiate the proceedings than would his non-attendance at an adjourned hearing in Court.

Appeal allowed.

[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C.J.

March 2, 1938.

EDITH LILIAN WOOSEY.....Appellant.

v.

SYDNEY ARTHUR JOSEPH WOOSEY

.....Respondent.

[SINGAPORE MAGISTRATE'S APPEAL No. 6 of 1938]

Maintenance orders—reciprocal enforcement —District Judge's refusal to enforce order— Appeal—Reciprocal Enforcement of Maintenance Orders Ordinance (Cap. 47) S. 3; Minor Offences Ordinance (Cap. 24) S. 37 sub-s. 4.

A maintenance order, passed by the English High Court of Justice against the respondent, was registered in the Criminal District Court under Section 3 of the Reciprocal Enforcement of Maintenance Orders Ordinance. On default being made by the respondent in the payment of a sum of £100 payable under the order, a summons was issued to him calling upon him to shew cause why action should not be taken against him under S. 37 sub-s. 4 of the Minor Offences Ordinance. The respondent shewed cause. After hearing the evidence and what was alleged by counsel on both sides, the District Judge refused to enforce the order. Against this refusal the appellant appealed.

Held, that it is not competent for the District Judge to question the validity of a maintenance order, regularly issued by the High Court of Justice in England and duly registered in the District Court in pursuance of the Reciprocal Enforcement of Maintenance Orders Ordinance.

Held further that, on the District Judge refusing to make an order on the summons to shew cause, an appeal lies to the High Court against such refusal, and that the appellate Court has power, if considered convenient and just, to remit the case to the District Judge for further hearing and reconsideration on a different basis of fact.

MAGISTRATE'S APPEAL.

Walters for Mrs. Woosey and, under fiat, for the Crown so far as interested.

The Maintenance Order in question in this case was made on the 24th March, 1937, by the President of the Probate, Divorce and Admiralty Division, of the High Court in England. It is enforceable under the Reciprocal Enforcement of Maintenance Orders Ordinance (Cap. 47) s. 3, "as if it had been an order originally obtained in the District Court." It is therefore enforceable as provided by s. 37 (4) of the Minor Offences Ordinance (Cap. 24). The decision appealed from was made on application under that subsection.

Chew Cheng Swee v. *Chan Chye Neo*, 1931, S.S.L.R. 187, (1932) 1 M.L.J. 5 shows that there is an appeal from the District Court by either party concerned in such an application, as the matter is of a criminal nature. The Criminal Procedure Code, s. 302 (1), therefore, gives a right of appeal to this Court.

Mrs. Woosey and or the Crown are dissatisfied with the judgment sentence or order pronounced by the District Court and so bring this appeal under the last mentioned section.

[**McELWAINE, C. J.**—This appeal is not an appeal by the Public Prosecutor. Are you not precluded therefore from appealing by reason of s. 300 (1) of the Criminal Procedure Code, which lays down that when an accused person has been acquitted there shall be no appeal except by the Public Prosecutor?]

No. It cannot be said that Woosey was "acquitted" within the meaning of s. 300 (1) of the Criminal Procedure Code. "Acquitted" in that section has its ordinary meaning as popularly used in connection with criminal cases. s. 302 of the Criminal Prosedure Code clearly shows that criminal cases in the District Court may end otherwise than by conviction or acquittal, and this case so ended.

[**McELWAINE, C.J.**—Could you not go back and make a new application and is not this appeal unnecessary?]

We could go back, but I contend that it would be wrong to send us back on a new application, in view of the grounds of decision of the learned District Judge, which show that he has misapprehended his rights and duties in such an application. He says, "In my opinion I should not enforce the order of the High Court. There is nothing to show why the High Court ordered payment of £20 p.m. and disregarded defendant's offer. The cost of an appeal might